IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 3252 of 2007()

CC.489/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER: COMPLAINANT

SHIBU.A., S/O.LATE A.ABDUL SALAM,
'FIRDOUS', 45/1871-H, P.J.ANTONY GROUND ROAD,
PACHALAM.

BY ADV. SMT.P.M.SWAYAM PRABHA
SMT.R.ASALATHA VARMA

RESPONDENTS: STATE & ACCUSED

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. S.SHANAVAS, S/O.SHOUK, PLANKALA PUTHEN
VEEDU, THEMPAMOODU, PULLAMPARA P.O.
VENJARAMOODU, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 3252 of 2007

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Dated: 26-09-2007

ORDER

The revision petitioner is the complainant in C.C. 489 of 2002 which is a prosecution under Sec. 138 of the Negotiable Instruments Act, 1881 in respect of a cheque involving Rs. 35,000/- issued in the year 2002. As per the impugned order dated 28-07-2007, the learned Magistrate dismissed the complaint under Sec. 204 (4) Cr.P.C. for the failure on the part of the revision petitioner to take steps for issuing warrants against the accused or appear before court. Since the accused in the case is absconding and the impugned order was passed without hearing him, notice to the 2nd respondent/accused is dispensed with.

2. The learned counsel for the respondent would submit that even after repeated warrants for more than three times the accused could not be arrested and his appearance could be secured before court and instead of transferring the case to the Long Pending Register, no useful purpose will be served by repeating the N.B.W. again. I see some force in the above submission. The learned Magistrate should not have dismissed the the complaint. Instead , an

opportunity should have been given to the revision petitioner/complainant either to take steps or the Magistrate should have included the case in the Long Pending Register if repeated warrants were no avail. The impugned order is accordingly set aside. C.C. No. 489 of 2002 will stand restored to file. The revision petitioner shall appear before the court below on **22-10-2007** without any further notice. It shall be open to the revision petitioner to request the Magistrate to transfer the case to the Long Pending Case Register if the progression of the case hitherto warrants such a course.

This Revision Petition is disposed of as above.

V. RAMKUMAR,
(JUDGE)

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